

PT 96-2
TAX TYPE: PROPERTY TAX
ISSUE: EDUCATIONAL OWNERSHIP/USE

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

NOGLE AND BLACK, INC., LESSEE)	
UNIVERSITY OF ILLINOIS, OWNER)	Docket # 94-10-116
)	Parcel Index # Leasehold 29-26-02-
376-001)	
)	(Champaign
County))	
)	
Applicant)	
)	
)	
v.)	
)	
)	
)	
THE DEPARTMENT OF REVENUE)	George H. Nafziger
OF THE STATE OF ILLINOIS)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: ATTORNEY TRACY J. NUGENT APPEARED ON BEHALF OF NOGLE AND BLACK, INC.

SYNOPSIS:

THE HEARING IN THIS MATTER WAS HELD AT 101 WEST JEFFERSON STREET, SPRINGFIELD, ILLINOIS, ON OCTOBER 24, 1995, TO DETERMINE WHETHER OR NOT CHAMPAIGN COUNTY LEASEHOLD PARCEL NO. 29-26-02-376-001 SHOULD BE EXEMPT FROM REAL ESTATE TAX FOR THE 1994 ASSESSMENT YEAR.

MR. CHARLES NOGLE, THE PRESIDENT OF NOGLE AND BLACK, INC. (HEREINAFTER REFERRED TO AS THE "APPLICANT"), AND MR. JAMES NOGLE, THE VICE-PRESIDENT, SECRETARY, AND TREASURER OF THE APPLICANT, WERE PRESENT, AND TESTIFIED ON BEHALF OF THE APPLICANT AT THE HEARING.

THE ISSUES IN THIS MATTER INCLUDE FIRST WHETHER A STATE AGENCY, THE UNIVERSITY OF ILLINOIS, WAS THE OWNER OF THE FEE INTEREST UNDERLYING THIS LEASEHOLD PARCEL DURING THE 1994 ASSESSMENT YEAR. THE SECOND ISSUE IS WHETHER THIS LEASEHOLD PARCEL WAS LEASED DURING THE 1994 ASSESSMENT YEAR TO THE APPLICANT. THE THIRD ISSUE IS WHETHER THE APPLICANT QUALIFIES FOR EXEMPTION FROM REAL ESTATE TAX DURING 1994. THE FINAL ISSUE IS WHETHER THE LEASEHOLD PARCEL HERE IN ISSUE AND THE HANGAR LOCATED THEREON, ARE PROPERLY ASSESSABLE FOR THE 1994 ASSESSMENT YEAR, TO THE APPLICANT. FOLLOWING THE SUBMISSION OF ALL OF THE EVIDENCE AND A REVIEW OF THE RECORD, IT IS DETERMINED THAT THE UNIVERSITY OF ILLINOIS OWNED THE FEE INTEREST IN THIS LEASEHOLD PARCEL DURING THE 1994 ASSESSMENT YEAR. IT IS FURTHER DETERMINED THAT THIS LEASEHOLD PARCEL WAS LEASED DURING THE 1994 ASSESSMENT YEAR TO THE APPLICANT. IT IS ALSO DETERMINED THAT THE APPLICANT IS NOT AN ORGANIZATION WHICH QUALIFIED FOR EXEMPTION FROM REAL ESTATE TAX DURING 1994. FINALLY, IT IS DETERMINED THAT THE LEASEHOLD PARCEL HERE IN ISSUE AND THE HANGAR LOCATED THEREON, ARE PROPERLY ASSESSABLE FOR THE 1994 ASSESSMENT YEAR TO THE APPLICANT.

FINDINGS OF FACT

1. THE POSITION OF THE ILLINOIS DEPARTMENT OF REVENUE (HEREINAFTER REFERRED TO AS THE "DEPARTMENT") IN THIS MATTER, NAMELY THAT THE LEASEHOLD PARCEL HERE IN ISSUE DOES NOT QUALIFY FOR EXEMPTION DURING THE

1994 ASSESSMENT YEAR WAS ESTABLISHED BY THE ADMISSION IN EVIDENCE OF DEPARTMENT'S EXHIBITS NUMBERED 1 THROUGH 6.

2. ON JANUARY 5, 1995, THE CHAMPAIGN COUNTY BOARD OF REVIEW TRANSMITTED AN APPLICATION FOR PROPERTY TAX EXEMPTION TO BOARD OF REVIEW, CONCERNING THIS LEASEHOLD PARCEL FOR THE 1994 ASSESSMENT YEAR TO THE DEPARTMENT. (DEPT. EX. NO. 1)

3. ON MAY 25, 1995, THE DEPARTMENT DENIED THE EXEMPTION OF THE APPLICANT FOR THIS LEASEHOLD PARCEL FOR THE 1994 ASSESSMENT YEAR. (DEPT. EX. NO. 2)

4. ON JUNE 12, 1995, THE APPLICANT'S ATTORNEY REQUESTED A FORMAL HEARING IN THIS MATTER. (DEPT. EX. NO. 3)

5. THE HEARING IN THIS MATTER, WHICH WAS HELD ON OCTOBER 24, 1995, WAS HELD PURSUANT TO THAT REQUEST.

6. THE UNIVERSITY OF ILLINOIS (HEREINAFTER REFERRED TO AS THE "UNIVERSITY"), ACQUIRED THE QUARTER SECTION OF LAND, WHICH INCLUDES THE LAND ON WHICH THIS LEASEHOLD PARCEL IS LOCATED BY A WARRANTY DEED DATED SEPTEMBER 18, 1943. (DEPT. EX. NO. 1B)

7. ON AUGUST 25, 1993, THE UNIVERSITY LEASED A PORTION OF THAT QUARTER SECTION, NAMELY A TRACT OF LAND CONTAINING APPROXIMATELY 25,840 SQUARE FEET TO THE APPLICANT, FOR A TERM OF THIRTY YEARS. (DEPT. EX. NO. 1D)

8. PURSUANT TO SAID LEASE, THE APPLICANT AGREED TO CONSTRUCT, AT ITS OWN EXPENSE, A CORPORATE HANGAR OF APPROXIMATELY 9,880 SQUARE FEET, A PILOT'S LOUNGE OF APPROXIMATELY 950 SQUARE FEET, A PARKING APRON OF APPROXIMATELY 11,625 SQUARE FEET, AND A FIVE-CAR PARKING AREA OF APPROXIMATELY 3,385 SQUARE FEET. SAID FACILITIES WERE TO COST APPROXIMATELY \$275,000.00. UPON COMPLETION OF SAID

IMPROVEMENTS, THOSE IMPROVEMENTS, PURSUANT TO THE LEASE, BECAME THE PROPERTY OF THE UNIVERSITY.

9. PURSUANT TO PARAGRAPH 5E OF THIS LEASE, THE APPLICANT AGREED TO PAY ALL TAXES ASSESSED AGAINST THE APPLICANT'S LEASEHOLD INTEREST.

10. THE APPLICANT THEN PROCEEDED TO BUILD THE IMPROVEMENTS ON THIS LEASEHOLD PARCEL, PURSUANT TO THE TERMS OF THE LEASE.

11. THE CHAMPAIGN COUNTY BOARD OF REVIEW THEN PROCEEDED TO LEVY A LEASEHOLD ASSESSMENT ON THE PARCEL HERE IN ISSUE AND THE IMPROVEMENTS THEREON, FOR THE 1994 ASSESSMENT YEAR. (DEPT. EX. NO. 1)

12. THE APPLICANT IS AN ILLINOIS BUSINESS CORPORATION ENGAGED PRIMARILY IN THE BUSINESS OF APARTMENT CONSTRUCTION AND RENTAL. (TR. P. 15) THE APPLICANT ENGAGES IN THESE ACTIVITIES, WITH THE INTENTION OF MAKING A PROFIT. (TR. P. 23)

13. THE APPLICANT HAS LEASED THE PARCEL HERE IN ISSUE AND CONSTRUCTED THE IMPROVEMENTS THEREON, FOR THE PURPOSE OF STORING AND MAINTAINING AIRCRAFT IN WHICH THE APPLICANT OR PERSONS AFFILIATED WITH THE APPLICANT, HAVE A SUBSTANTIAL OWNERSHIP INTEREST. (TR. P. 20)

14. BASED ON THE FOREGOING, I FIND THE UNIVERSITY OWNED THE FEE INTEREST UNDERLYING THIS LEASEHOLD PARCEL DURING THE 1994 ASSESSMENT YEAR.

15. I ALSO FIND THAT THE LEASEHOLD PARCEL HERE IN ISSUE WHICH CONTAINS .59 OF AN ACRE, WAS LEASED TO THE APPLICANT DURING THE ENTIRE 1994 ASSESSMENT YEAR.

16. THE APPLICANT, I FIND, IS A FOR-PROFIT CORPORATION, WHICH DOES NOT QUALIFY FOR EXEMPTION FROM REAL ESTATE TAX.

CONCLUSIONS OF LAW:

ARTICLE IX, SECTION 6, OF THE ILLINOIS CONSTITUTION OF 1970, PROVIDES IN PART AS FOLLOWS:

THE GENERAL ASSEMBLY BY LAW MAY EXEMPT FROM TAXATION ONLY THE PROPERTY OF THE STATE, UNITS OF LOCAL GOVERNMENT AND SCHOOL DISTRICTS AND PROPERTY USED EXCLUSIVELY FOR AGRICULTURAL AND HORTICULTURAL SOCIETIES, AND FOR SCHOOL, RELIGIOUS, CEMETERY AND CHARITABLE PURPOSES.

THE FIRST SENTENCE OF 35 ILCS 200/15-55 PROVIDES AS FOLLOWS:

ALL PROPERTY BELONGING TO THE STATE OF ILLINOIS IS EXEMPT.

35 ILCS 200/9-195 THEN GENERALLY PROVIDES FOR THE TAXATION OF LEASEHOLD INTERESTS IN EXEMPT PROPERTY AS FOLLOWS:

EXCEPT AS PROVIDED IN SECTION 15-55, WHEN PROPERTY WHICH IS EXEMPT FROM TAXATION IS LEASED TO ANOTHER WHOSE PROPERTY IS NOT EXEMPT, AND THE LEASING OF WHICH DOES NOT MAKE THE PROPERTY TAXABLE, THE LEASEHOLD ESTATE AND THE APPURTANCES SHALL BE LISTED AS THE PROPERTY OF THE LESSEE THEREOF, OR HIS OR HER ASSIGNEE.

SINCE ALL PROPERTY OWNED BY THE STATE OF ILLINOIS, REGARDLESS OF USE, IS EXEMPT, CLEARLY THE LEASING OF STATE OF ILLINOIS PROPERTY IS NOT GOING TO MAKE IT TAXABLE.

IT IS WELL SETTLED IN ILLINOIS, THAT WHEN A STATUTE PURPORTS TO GRANT AN EXEMPTION FROM TAXATION, THE FUNDAMENTAL RULE OF CONSTRUCTION IS THAT A TAX EXEMPTION PROVISION IS TO BE CONSTRUED STRICTLY AGAINST THE ONE WHO ASSERTS THE CLAIM OF EXEMPTION. INTERNATIONAL COLLEGE OF SURGEONS V. BRENZA, 8 ILL.2D 141 (1956); MILWARD V. PASCHEN, 16 ILL.2D 302 (1959); COOK COUNTY COLLECTOR V. NATIONAL COLLEGE OF EDUCATION, 41 ILL.APP.3D 633 (1ST DIST. 1976). WHENEVER DOUBT ARISES, IT IS TO BE RESOLVED AGAINST EXEMPTION, AND IN FAVOR OF TAXATION. PEOPLE EX REL. GOODMAN V. UNIVERSITY OF ILLINOIS FOUNDATION, 388 ILL. 363 (1944); PEOPLE EX REL. LLOYD V. UNIVERSITY OF ILLINOIS, 357 ILL. 369 (1934). FINALLY, IN ASCERTAINING WHETHER OR NOT A PROPERTY IS

STATUTORILY TAX EXEMPT, THE BURDEN OF ESTABLISHING THE RIGHT TO THE EXEMPTION IS ON THE ONE WHO CLAIMS THE EXEMPTION. MACMURRAY COLLEGE V. WRIGHT, 38 ILL.2D 272 (1967); GIRL SCOUTS OF DUPAGE COUNTY COUNCIL, INC. V. DEPARTMENT OF REVENUE, 189 ILL.APP.3D 858 (2ND DIST. 1989); BOARD OF CERTIFIED SAFETY PROFESSIONALS V. JOHNSON, 112 ILL.2D 542 (1986).

BASED ON THE FOREGOING AUTHORITY, ALL LEASED STATE OF ILLINOIS PROPERTY IS TAXABLE, UNLESS SECTION 15-55 PROVIDES OTHERWISE.

SECTION 15-55 THEN GOES ON TO PROVIDE AS FOLLOWS:

HOWEVER, THE STATE AGENCY HOLDING TITLE SHALL FILE THE CERTIFICATE OF OWNERSHIP AND USE REQUIRED BY SECTION 15-10, TOGETHER WITH A COPY OF ANY WRITTEN LEASE OR AGREEMENT IN EFFECT ON MARCH 30 OF THE ASSESSMENT YEAR, CONCERNING PARCELS OF 1 ACRE OR MORE OR AN EXPLANATION OF THE TERMS OF ANY ORAL AGREEMENT UNDER WHICH THE PROPERTY IS LEASED, SUBLEASED OR RENTED.

THIS LANGUAGE CLEARLY PLACES AN ADDITIONAL BURDEN ON THE STATE, WITH REGARD TO ANNUAL REPORTING CONCERNING LEASES OF STATE PROPERTY OF MORE THAN ONE ACRE.

THE NEXT PARAGRAPH OF SECTION 15-55 CONTAINS SPECIAL PROVISIONS PERTAINING TO THE USE BY OTHERS OF ILLINOIS STATE TOLL HIGHWAY AUTHORITY OASES.

SECTION 15-55 THEN GOES ON TO SPECIFICALLY EXEMPT UNDER CERTAIN CIRCUMSTANCES STATE PROPERTY, WHICH IS LEASED TO THE ILLINOIS PRAIRIE PATH CORPORATION.

SINCE SECTION 15-55, EXCEPT FOR THESE TWO ENUMERATED SPECIAL PROVISIONS, IS SILENT AS TO LEASEHOLD PARCELS OF LESS THAN ONE ACRE, AND SECTION 9-195 CLEARLY TAXES ALL LEASEHOLD PARCELS, WHERE THE LEASING DOES NOT MAKE THE PARCEL TAXABLE, IN VIEW OF THE PRESUMPTION THAT TAX EXEMPTION PROVISIONS SHALL BE STRICTLY CONSTRUED, IT IS CLEAR THAT THE

GENERAL ASSEMBLY INTENDED FOR SECTION 9-195 TO APPLY TO THE LEASING BY THE STATE OF ILLINOIS OF PARCELS OF LESS THAN ONE ACRE. THE LANGUAGE OF SECTION 15-55 BY REFERRING TO PARCELS OF ONE ACRE OR MORE SIMPLY RELIEVES THE STATE OF THE REQUIREMENTS OF FILING COPIES OR EXPLAINING THE TERMS OF LEASES OF LESS THAN ONE ACRE, ON OR BEFORE MARCH 30 OF EACH ASSESSMENT YEAR.

THE APPLICANT LESSEE IN THIS CASE BEING A FOR-PROFIT CORPORATION DOES NOT QUALIFY FOR EXEMPTION FROM REAL ESTATE TAX ON THIS LEASEHOLD PARCEL.

I THEREFORE RECOMMEND THAT CHAMPAIGN COUNTY LEASEHOLD PARCEL NO. 29-26-02-376-001 REMAIN ON THE TAX ROLLS FOR THE 1994 ASSESSMENT YEAR, AND BE ASSESSED TO THE APPLICANT HEREIN, WHO IS THE OWNER OF SAID LEASEHOLD PARCEL.

RESPECTFULLY SUBMITTED,

GEORGE H. NAFZIGER
ADMINISTRATIVE LAW JUDGE

, 1995